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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/638,841	08/11/2003	Peter C. Michels	20011/1474	4458
7590	09/18/2006			EXAMINER CHANG, CELIA C
Philip E. Hansen, P.h.D Heslin Rothenberg Farley & Mesiti, P.C. 5 Columbia Circle Albany, NY 12203			ART UNIT 1625	PAPER NUMBER

DATE MAILED: 09/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/638,841	MICHELS ET AL.	
	<b>Examiner</b> Celia Chang	<b>Art Unit</b> 1625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 03 July 2006.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 3-16 and 25-31 is/are withdrawn from consideration.
- 5) Claim(s) 2 is/are allowed.
- 6) Claim(s) 1, 17-24, 32 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____.                                     |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____.   | 6) <input type="checkbox"/> Other: _____.                         |

### **DETAILED ACTION**

1. Amendment and response filed by applicants dated July 3, 2006 have been entered and considered carefully.

Claims 1-32 are pending.

Initially, an error of the previous office action is hereby corrected. Claims 25-31 were erroneously typed which should be 17-23. Therefore, claims 1, 17-23, 32 reading on claim 2 the elected species are prosecuted. Claims 3-16, 24-31 stayed withdrawn from consideration per 37 CFR 1.142.

2. The rejection of claims 1-2, 17-23, 32 (correction 1-2, 25-32) under 35 USC 112 first paragraph is maintained for claims 1, 17-23 and 32. The rejection under 35 USC 112 first paragraph for claim 2 is dropped in view of the amendment.

Please note that applicants' election of group I species *Stemphylium consortiale* was made without traverse. If applicants do not consider processes employing different microorganism are obvious variations of each other, then the 112 first paragraph rejection is in consistency with this non-traversal. Because, the specification while provided screening data on many species, a great variation was observed in table 2, p.28-30. There is no description as to what percentage of conversion is acceptable as being passing the screening, many of the species after 6 days only produced limited conversion. This evidence supports that each species of microbial is distinct and a set of fermentation condition must be individually enabled for such diversity of strand of microbial to operate. No description in the record that such strand such as *Bacillus subtilis* or *Penicillium notatum* would be operable and can be extrapolated to those mutants which have not yet be discovered with respect to the R4 is alkyl material.

3. The new matter rejection is dropped in view of the antecedent basis pointed out by applicants in table 2.

4. The rejection of claims 1-2, 17-23, 32 (correction 1-2, 25-32) under 35 USC 103(a) over Azerad et al. '693 in view of '469, '453, Charpentier et al. '553, Goldberg et al. '549, Page '513

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or without '859 further in view of Umezawa CA 84 is dropped in view of the amendment naming the species clearly demarcated from the prior art.

5. A terminal disclaimer filed by applicants has been accepted. Therefore, the obviousness type double patenting is obviated.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Claim 2 is allowed.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Celia Chang whose telephone number is 571-272-0679. The examiner can normally be reached on Monday through Thursday from 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas McKenzie, Ph. D., can be reached on 571-272-0670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

OACS/Chang  
Sept. 13, 2006

  
Celia Chang  
Primary Examiner  
Art Unit 1625